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Date August 15, 2005

To Examiner Alan T. GANTT

Of PTO Group Art Unit 2684

Fax (571) 273-8300

From Nataliya Dvorson Reg. No. 56,616

Subject APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Our Ref Q64525 Appln No 09/855,499

Conf No 9426 Inventors Patrick BLANC

Pages 19 (including cover sheet)

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1. This cover sheet (one page)
2. Submission of Appeal Brief (in duplicate with deposit account authorization) (two pages)
3. Appeal Brief under 37 C.F.R. § 41.37 (16 pages)

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Nataliya Dvorson

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Patrick BLANC

Docket No: Q64525

Appln. No.: 09/855,499

Group Art Unit: 2684

Confirmation No.: 9426

Examiner: Alan T. GANTT

Filed: May 16, 2001

For: A METHOD OF ADJUSTING THE TRANSMISSION POWER OF BASE STATIONS  
TRANSMITTING IN MACRO-DIVERSITY

## SUBMISSION OF APPEAL BRIEF

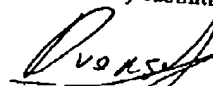
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P.O. Box 1450  
Alexandria, VA 22313-1450

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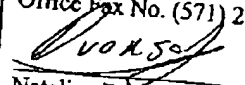
Respectfully submitted,

Nataliya Dvorson  
Registration No. 56,616SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860WASHINGTON OFFICE  
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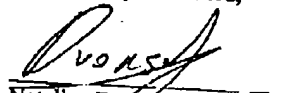
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Nataliya Dvorson  
Registration No. 56,616

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

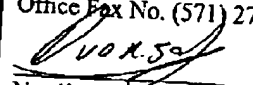
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Commissioner for Patents

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Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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**I. REAL PARTY IN INTEREST**

The real party in interest is ALCATEL, by way of an Assignment recorded on August 13, 2001 at Reel 012070, Frame 0848.

**II. RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-12 are all the claims pending in the application. Claims 1-12 presently stand finally rejected.

Claims 1-12 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by a PCT Publication No. WO 99/52310 to Salonaho (hereinafter "Salonaho").

No other grounds of rejection or objection currently are pending. This appeal is directed to the rejected claims 1-12.

**IV. STATUS OF AMENDMENTS**

With the filing of this Brief, all Amendments have been entered and considered by the Examiner.

The application was originally filed with claims 1-10.

Appellant filed an Amendment under 37 C.F.R. § 1.111 on June 28, 2004, in response to the Office Action mailed February 27, 2004, in which claims 1 and 4-8 were editorially amended and claims 11 and 12 were added.

Appellant filed a Response under 37 C.F.R. § 1.116 on April 15, 2005 in response to the Final Office Action dated December 15, 2004. There were no amendments to the claims.

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According to the Advisory Action mailed June 6, 2005, the Examiner maintained the rejection of claims 1-12. On June 15, 2005, Appellant filed a Notice of Appeal to appeal the final rejection of claims 1-12.

The Appendix included with this Brief, sets forth the claims involved in the appeal, and reflects all the claim changes made during the prosecution of the above-described application.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant's invention relates to a method of adjusting transmission power for base stations transmitting in macro-diversity in a mobile radio-communication system. Appellant's invention further relates to a radio network controller (RNC) and a base station (B node) for adjusting transmission power in the base station transmitting in macro-diversity in a mobile radio-communication system. In Appellant's invention, a reference transmission power for the adjustment is signaled to each base station together with an adjustment period. Each of the base stations periodically adjusts its transmission power to the reference transmission power at said adjustment period (Figs. 1 and 3; page 4, lines 1 to 9 of the specification and page 6, lines 16 to 26 of the specification).

That is, the parameters which are signaled to a base station include a reference power and an adjustment period. The adjustment period is such that a base station periodically adjusts its transmission power to the reference transmission power at this indicated adjustment period. In other words, the reference transmission power is not changed (*i.e.*, not signaled) at each adjustment period. In other words, there is no need to signal updated values frequently even if the reference transmission power has changed. It is only necessary to perform regular adjustments even if they are performed on the most recently signaled value for the reference

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transmission power, which does not necessarily correspond to an up-to-date value of the transmission power (see page 4, lines 10 to 21 of the specification and page 7, lines 1 to 14).

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

There is one issue on appeal. The only issue on appeal is whether the Examiner improperly finally rejected claims 1-12 under 35 U.S.C. § 102(e) as being allegedly anticipated by a PCT Publication No. WO 99/52310 to Salonaho (hereinafter "Salonaho").

**VII. ARGUMENT**

The only issue is whether the Examiner improperly finally rejected claims 1-12 under 35 U.S.C. § 102(e) as being anticipated by Salonaho. Appellant respectfully requests the Board to reverse this final rejection at least because of the following arguments. Appellant addresses each of the finally rejected claims 1-12, below. At least initially, Appellant's arguments focus on claim 1, as being the broadest independent claim rejected on this ground.

**A. Exemplary Features of Claim 1**

Independent claim 1 recites a unique combination of features including:

a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and

wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period.

By way of an example, the parameters which are signaled to a base station include a reference power and an adjustment period. The adjustment period is such that a base station periodically adjusts its transmission power to the reference transmission power at this adjustment period. In

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other words, the reference transmission power is not changed (*i.e.*, not signaled) at each adjustment period. That is, in the exemplary embodiment, there is no need to signal updated values frequently even if the reference transmission power has changed. It is only necessary to perform regular adjustments even if they are performed on the most recently signaled value for the reference transmission power, which does not necessarily correspond to an up-to-date value of the transmission power.

**B. Disclosure of the Salonaho document**

Salonaho discloses reducing the average downlink transmitting power from a base station to a mobile station during a soft handover. In particular, Salonaho teaches changing the target power (*i.e.*, generally signaled in an initiation message) at each power correction interval (page 6, lines 15-25). A base station calculates a power correction operation to be applied during each power correction interval, based on its initial power, on the signaled target power, and on a predetermined number of power correction steps during a power correction interval. The power correction steps are used in combination with the closed loop adjustments steps (page 6, line 29 to page 7 line 4). Moreover, Salonaho teaches transmitting an initiation message at each power correction interval.

Salonaho further discloses that it is possible to refrain from transmitting the initiation message only if the parameters remain unchanged. In this case, the determining of the commencement could be done by utilizing an internal timer or a counter exceeding a predetermined threshold. Once a new power correction interval is determined, it compares the used transmission power with the target power (col. 6, lines 26 to 33).



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**C. Examiner's Position**

The Examiner alleges that claim 1 is directed to a method of adjusting transmission power for base stations and is anticipated by Salomaho. The Examiner alleges that Salomaho's method of signaling parameters to the base station used for a correction process is equivalent to signaling the adjustment power together with an adjustment period and periodically adjusting the transmission power to the reference transmission power, at the adjustment period (*see* Final Office Action dated December 15, 2004).

In particular, the Examiner alleges that Salomaho's method allows for a power control processing unit to adjust the power correction interval adaptively where the new value is communicated in the initiation message together with the new target power. Also, there are provisions for the use of a timer in determining the commencement of the interval, and the use of timers are common when providing for periodic changes (*see* continuation sheet of the Advisory Action dated June 6, 2005).

**D. Appellant's Position**

To be an "anticipation" rejection under 35 U.S.C. § 102, the reference must teach every element and recitation of the Applicant's claims. Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the reference must clearly and unequivocally disclose every element and recitation of the claimed invention.

In Salomaho, the commencement of a new power correction interval is determined by the reception of an "initiation message" containing a new target power. That is, the power correction interval is determined by the receipt of the initiation message. Then, the transmission

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power is adjusted to this new target power within this power correction interval initiated by the receipt of the message (page 4 lines 4-6 and page 6 lines 15-37). In other words, in Salonaho, a new target power is signaled for each new power correction interval, and the transmission power is adjusted to a new target power at each new power correction interval. In short, in Salonaho, the "initiation message" needs to be received to commence a power correction interval.

In Salonaho, the commencement of a power correction interval is determined at the base stations, either by the reception of an initiation message (page 6 lines 18-20 of Salonaho) or by a timer or counter exceeding a predetermined threshold (page 6 lines 27-29 of Salonaho). That is, Salonaho does not teach signaling to the base stations a period for the commencement of power correction intervals, and then the base stations commencing power correction periodically, at this signaled period. In other words, Salonaho does not teach signaling to the base stations an adjustment period, and then the base stations adjusting their power periodically, at the signaled adjustment period.

In the section titled "Response to Arguments" appearing on page 2 of the Final Office Action dated December 15, 2004, the Examiner states:

Salonaho teaches power correction intervals, calculating target power and correction step limits for each base station, signaling these parameters to each base station, and each base station executes a power correction algorithm. Typically, intervals are thought of as quite often being periodic. The target power is the reference power as called out in the claim. These parameters are signaled to each base station. The base station does adjust this reference within the power correction or adjustment interval.

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That is, the Examiner is trying to equate the power correction interval of Salonaho with the adjustment period as set forth in claim 1. Appellant respectfully submits, however, that it is improper to compare the power correction interval of Salonaho with the adjustment period as set forth in claim 1. In Salonaho, a power correction interval is an interval containing a number of power correction steps into which a power correction is divided (page 4 lines 9-12 of Salonaho). The present invention as claimed in claim 1 is not concerned with the question of whether adjustments should be carried out in a single step or over a certain number of steps contained in a certain time duration or interval.

Furthermore, in the second numbered paragraph appearing on page 3 of the final Office Action dated December 15, 2004, the Examiner states:

Salonaho meets the following limitations:  
wherein a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period (page 4, lines 4-6 [the reference transmission power is the target power level])...

It is respectfully noted that in above-cited passage of the Final Office Action, the Examiner does not indicate how Salonaho meets the unique feature of a signaled adjustment period set forth in claim 1.

The Examiner further states in this second numbered paragraph on page 3 of the Final - Office Action:

wherein each of said base stations periodically adjusts its transmission power to said reference power, at said adjustment period (page 6, lines 15-37)...

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At least for the reasons explained above, this passage of Salomaho does not disclose signaling to the base stations an adjustment period, and then the base stations adjusting their power periodically, at the signaled adjustment period.

Therefore, "a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period," as set forth in claim 1 is not taught or suggested by Salomaho, which lack periodic adjustment of the transmission power to said reference transmission power at the signaled adjustment period within the meaning of claim 1. For at least these exemplary reasons, Appellant respectfully submits that independent claim 1 is patentably distinguishable from Salomaho.

Appellant respectfully submits that claims 2-5 and 10 are allowable at least by virtue of their dependency on claim 1.

Independent claims 6 and 9 recite features similarly to the features argued above with respect to claim 1. Namely, independent claim 6 among a number of unique features recites "means for signaling a reference transmission power value for said adjustment to each of said base stations, together with an adjustment period," and claim 9 recites a number of unique features including "means for receiving a reference transmission power value for said adjustment, as transmitted by a radio network controller together with an adjustment period; and means for periodically adjusting its transmission power to said reference transmission power value, at said adjustment period."

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Since independent claims 6 and 9 contain features that are similar to the features argued above with respect to claim 1, those arguments are respectfully submitted to apply with equal force here. For at least substantially the same reasons, therefore, Appellant respectfully requests the Examiner to withdraw this rejection of independent claims 6 and 9. Claims 7 and 8 are patentable at least by virtue of their dependency on claim 6 and claims 11 and 12 are patentable at least by virtue of their dependency on claim 9.

Appellant, therefore, respectfully submits that the claims are not anticipated by Salomaho. The rejection is thus not supported by substantial evidence (or any credible evidence at all). The Examiner's arbitrary and steadfast rejection of claims 1-12 must be reversed.

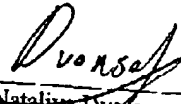
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**VIII. CONCLUSION**

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Nataliya Dvorson  
Registration No. 56,616

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

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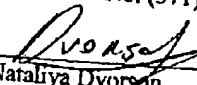
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**CLAIMS APPENDIX**

**CLAIMS 1-12 ON APPEAL:**

1. A method of adjusting transmission power for base stations transmitting in macro-diversity in a mobile radio-communications system,  
wherein a reference transmission power for said adjustment is signaled to each of said base stations together with an adjustment period, and  
wherein each of said base stations periodically adjusts its transmission power to said reference transmission power, at said adjustment period.
2. A method according to claim 1, wherein said periodically-performed adjustments are performed at predetermined instants.
3. A method according to claim 2, wherein the transmitted information is structured in the form of frames that are numbered using continuous increasing numbering, said adjustment period is expressed as a number  $N$  of frames, and said predetermined instants corresponds to frames numbered  $n$  (modulo  $N$ ), where  $0 \leq n < N$ .
4. A method according to claim 1, wherein an updated value for the adjustment period can be signaled.
5. A method according to claim 1, wherein an updated reference transmission power value can be signaled.

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6. A radio network controller, including, for adjusting transmission powers in base stations transmitting in macro-diversity in a mobile radio-communications system: means for signaled a reference transmission power value for said adjustment to each of said base stations, together with an adjustment period.
7. A radio network controller according to claim 6, comprising:  
means for signaled an updated adjustment period value.
8. A radio network controller according to claim 6, comprising:  
means for signaled an updated reference transmission power value.
9. A base station, including, for adjusting its transmission power when transmitting in macro-diversity in a mobile radio-communications system:  
means for receiving a reference transmission power value for said adjustment, as transmitted by a radio network controller together with an adjustment period; and  
means for periodically adjusting its transmission power to said reference transmission power value, at said adjustment period.
10. A mobile radio-communications system, comprising means for performing a method according to claim 1.



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11. The base station according to claim 9, wherein said periodically-performed adjustments are performed at predetermined instants.
12. The base station according to claim 11, wherein, the transmitted information is structured in form of frames that are numbered using continuous increasing numbering, said adjustment period is expressed as a number  $N$  of frames, and said predetermined instants corresponds to the frames numbered  $n$  (modulo  $N$ ), where  $0 \leq n < N$ .

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NONE.

EVIDENCE APPENDIX

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U.S. Appl. No. 09/855,499

NONE.

RELATED PROCEEDINGS APPENDIX